National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: July 16, 1997

TO: William C. Schaub, Regional Director, Region 7

FROM: Barry J. Kearney, Associate General Counsel, Division of Advice

SUBJECT: Local 372, International Brotherhood, of Teamsters, AFL-CIO et al., (Detroit Newspapers f/k/a Detroit, Newspaper Agency, The Detroit News, The Detroit Free Press), Case 7-CB-11282

554-1475-0137, 554-1475-0137-4000, 554-1475-0137-8000, 554-1475-5000, 554-1745-6760

This case was submitted to Advice to determine whether the Unions violated Section 8(b)(3) of the Act by failing to provide the Employers with information regarding 1) striking employees and 2) the activities of the Unions' strike publication.

FACTS

On July 13, 1995, the Unions began a strike against three newspaper employers, Detroit Newspapers, The Detroit News, and the Detroit Free Press (the Employers). Region 7 has issued a Consolidated Complaint alleging that the strike is an unfair labor practice strike. In February 1997, the Unions made unconditional offers to return to work on behalf of their respective members.

By letter dated February 25, 1997, the Employer requested the following information:

1. The name and bargaining unit of each striker covered by each Union's unconditional offer;

2. Information relating to the interim employment of the striking employees, including: The name and addresses of each employer; The dates of any employment or self-employment; The salary or wages and benefits received; The gross earnings from each strikers' interim employment;

3. Each striker's current address and telephone number.

By letter dated March 3, 1997, "in order to determine whether [the Unions] or any of the strikers seeking reinstatement are engaged in a conflict of interest inconsistent with their employment at [the Employers]," the Employers requested information regarding Journal, the Unions' strike publication. Specifically, the Employers requested:

1. The Union's intentions regarding continued publication of the Journal;

2. The names and bargaining units of employees providing services to Journal, including:

The nature of the services provided; The dates such service was provided; The salary, wages, fees, and/or benefits; received for performing such services; The gross earnings received for such services;

3. The identities of the owners of the Journal and a table of organization listing all positions and the names of the individuals filling these positions;

4. Any documents describing the reasons why the Journal was established, its purposes, and future operational or business goals;

5. The job descriptions for all positions at the Journal; Contact between the Journal for news services, wire services, etc.;

6. List of all equipment, machinery, books, computers, software, and furniture purchased by or on behalf of the Journal;

7. The Journal's printing arrangements;

8. The Journal's circulation;

9. Sources for funding the activities of the Journal.

By letter dated March 10, 1997, the Unions' attorney advised the Employers that the Unions made the unconditional offers to return to work on behalf of every member of their respective bargaining units who went on strike and had not returned to work. By letter dated March 20, 1997, the Unions' attorney further advised the Employers that their own address and telephone information was probably more accurate than the information maintained by the Unions, but noted that the Unions would continue to assist the Employers by providing any change in addresses. With respect to the information requested concerning interim earnings, the Unions' attorney responded that this information was not relevant to the Employers' bargaining duties and that the request appeared to seek discovery pertaining to unemployment and unfair labor practice litigation. The Unions' attorney also stated that the Unions did not possess some or all of the requested information.

By letter dated March 20, 1997, the Union's attorney advised the Employers that the Journal was a non-profit corporation formed in November 1995 for the sole purposes of boosting the morale of the Unions' members, providing a vehicle to inform the public of the Unions' positions concerning the labor dispute with the Employers and providing a means for the Unions' membership to engage in protected, concerted activity. The Unions' attorney further assured the Employers that the Journal "is not and never has been a 'business' or a 'competitor business'" of the Employers. Enclosed with the March 20 letter was a copy of the Journal's Articles of Incorporation. This document specifically states that the Journal was "intended to exist only during the pendency of the current labor dispute..." and "Upon a termination of the pending labor dispute will cease its publication of the interim newspaper and dissolve within a reasonable time thereafter." Based on the Articles of Incorporation and an assurance that the Unions intended to cease publication as soon as the labor dispute was resolved, the Unions' attorney advised the Employers that the Unions did not believe that the Employers were entitled to the requested information regarding employees working at the Journal.

Action

The charge should be dismissed in its entirety.

It is well settled that a union's statutory obligation to provide information relevant to bargaining is parallel to that of an employer.[(1)]

In determining whether an employer or union is required to provide the information requested is whether there is a "probability that the desired information [is] relevant, and that it would be of use [to the other party] in carrying out its statutory duties and responsibilities.[(2)]

The February 25 Request

With respect to items 1 and 3, the names, bargaining units, current addresses, and telephone numbers of the individuals represented in the Unions' unconditional offer to return to work, we agree that the requested information pertains to information located in the Employers' own personnel files. Moreover, the Unions reiterated that they would continue to assist the Employer in locating any missing employees.[(3)]

We also agree with the Region that the Unions lawfully refused to provide information requested regarding the interim employment and earnings of the bargaining unit members. An exception to the general "discovery" standard set forth in ***Acme*** is made where it can be shown that the requesting party does not intend to use the information for the purposes of collective

bargaining. In ***Coca Cola Bottling Company of Chicago,*** supra, the Board found that the employer did not act unlawfully by refusing to provide information concerning retirement benefit costs where it was demonstrated that the union sought this information in order to communicate it to the employer's competitors, not to fulfill any bargaining responsibilities with the employer. The Board determined that as the union did not have a legitimate collective bargaining purpose in seeking the information, thus it was not entitled to receive it.(4) Further, in ***WXON-TV***(5), the Board held that the union was not entitled to information regarding the termination of bargaining unit employees and the performance of bargaining unit work by nonunit employees because the request was made "akin to a discovery device" pursuant to its pursuit of the unfair labor practice charge rather than its statutory duties as collective bargaining representative.(6)

Here, the Employers' request for information regarding interim earnings and wages of bargaining unit employees is not relevant to collective bargaining. Rather, it appears that, as in ***WXON-TV,*** supra, the Employers seek the information for litigation purposes. Interim employment and earnings of strikers is of little use except to enable the Employers to estimate their potential financial exposure should they refuse to reinstate the strikers. The Employers have not articulated how this information might otherwise be relevant. In addition, the Employers' position that reinstatement is a permissive subject of bargaining over which they are not willing to engage in bargaining further indicates that the request is not for the purposes of bargaining. Therefore, the Employers are not entitled to production of items 1 through 4 of the February 25 request beyond the information already provided by the Union.

The March 3 Request

The Employers' request for information concerning the functions, purposes, and employees of the Journal is more complex. In ***Bausch & Lomb Optical Company,***(7) the Board determined that an employer was not obligated to bargain with a union that owned and operated one of the employer's local competitors due to the union's conflict of interest.(8) The Board has held that "the burden on the party seeking to prove this conflict of interest is a heavy one."(9) The Employers are arguably entitled to information concerning whether they have an obligation to bargain with the Unions. This situation would be analogous to a union's request for information from an employer regarding the operations of a suspected single employer or alter ego. In alter ego/single employer cases, the union must demonstrate that it has "an objective factual basis" for its belief that such a relationship exists.(10) Similarly, the Employers must articulate a reasonable basis for its belief that the Unions' publication is acting as a major competitor in order to obtain the requested information.

In Bausch & Lomb Optical Company, supra, the Board based its determination that the enterprise operated by the union was in direct competition with the employer's business because the union was engaged in the same industry (the manufacture and repair of eyeglasses) in the same location as the employer. In ***Visiting Nurses Association, Inc.,*** supra, the Board determined that the union was in direct competition with the employer's nurse's registry operations even though the union's private home placement service comprised only a portion of the employer's entire business.(11) However, in ***Alanis Airport Services, Inc.,*** supra, the Board determined that even if the union intended to become a direct competitor with the employer, this goal had not yet materialized. The Board held the mere existence of such an aim "does not currently constitute a clear and present danger of a conflict of interest that would interfere with the bargaining processes."(12)

In the instant case, the Employers merely state that they want the information "in order to determine whether [the Unions] or any of the strikers seeking reinstatement are engaged in a conflict of interest inconsistent with their employment. In response to the Employers' request, the Unions have provided the Journal's Articles of Incorporation, a statement that the purpose of the Journal is to give the striking employees an opportunity to communicate their position, and assurances that publication will cease upon the resolution of the unfair labor practice dispute. It is further noted that, unlike the Employers' daily newspapers, the Journal is a weekly tabloid publication which devotes a significant amount of its space to the strike and to other labor related issues. Although the Journal provides limited local and national news such as TV listings, sports, and restaurant reviews, its focus remains on the labor dispute. Accordingly, it would not appear that the Employers' have an "objective factual basis" for their assertion that the Journal is a competitor. Therefore, they are not entitled to any further information on this issue beyond that which already has been provided by the Unions.

In conclusion, the charge should be dismissed, absent withdrawal. The Unions' refusal to provide the Employer with information concerning the names and addresses of striking employees was not unlawful because this information is already

within the Employers' possession. The information requested by the Employers concerning the interim earnings of striking employees is sought for purposes of litigation and is not relevant and necessary to the Employers' bargaining duties. The Unions also acted lawfully in refusing to provide the Employers' with information concerning the operations and employees of the Journal as the Employers do not have an objective factual basis for asserting that Journal is engaged in direct competition with the Employers' publications.

B.J.K.

---

[1] ***Local 13, Detroit Newspaper Printing & Graphic Communications Union (Oakland Press Co.),*** **233 NLRB 994 (1977), enfd. 598 F.2d 267, 101 LRRM 2036 (D.C. Cir. 1979);** ***Teamsters Local 921,*** **309 NLRB 901 (1992);** ***Iron Workers Local 207 (Steel Erecting Contractors),*** **319 NLRB 87, 90 (1995).**

[2] ***NLRB v. Acme Industrial Co.,*** **385 U.S. 432 at 447 (1967);** ***Coca Cola Bottling Company of Chicago,*** **311 NLRB 424, 425 (1993).** ***Teamsters Local 921,*** **309 NLRB at 904.**

[3] ***Chicago Typographical Union No. 46 (Chicago Sun Times),*** **296 NLRB 180 at 187 (1989).**

[4] **311 NLRB at 425-26.**

[5] **289 NLRB 615 (1988).**

[6] **289 NLRB at 617-18.**

[7] **108 NLRB 1555 (1954).**

[8] **See** ***Wilkes Barre Publishing Company,*** **266 NLRB 438 (1988***); Visiting Nurses Association, Inc., Serving Alameda County,* **254 NLRB 49 (1981).**

[9] ***Alanis Airport Services, Inc.,*** **316 NLRB 1233 (1995) and cases cited therein.**

[10] ***Consolidation Coal Company,*** **307 NLRB 69 (1992);** ***Merchants Iron and Steel Corp., et al,*** **321 NLRB No. 47 (1996);** ***Union Builders, Inc.,*** **316 NLRB 406 (1995);** ***Maben Energy Corporation,*** **295 NLRB 149, 152 (1991);** ***Bohemia Inc.,*** **272 NLRB 1128 (1984).**

[11] **254 NLRB at**

[12] **Id, at 1234.**